HOUSE OF LORDS

International Agreements Committee

Corrected oral evidence: UK-Rwanda asylum agreement

Monday 18 December 2023

5 pm

Watch the meeting

Members present: Lord Goldsmith (The Chair); Lord Fox; Lord Grimstone of Boscobel; Baroness Hayter of Kentish Town; Lord Howell of Guildford; Lord Kerr of Kinlochard; Baroness Kingsmill; Lord Marland; Lord Razzall; Lord Udny-Lister; Lord Watts.

Evidence Session No. 1 Heard in Public Questions 1 - 18

Witnesses

I: Lord Anderson of Ipswich KBE KC; Professor Theodore Konstadinides, Professor of Law, University of Essex.

Examination of witnesses

Lord Anderson of Ipswich and Professor Theodore Konstadinides.

Q1 **The Chair:** Welcome to this evidence session of the International Agreements Committee on the UK-Rwanda asylum treaty. Thank you for being here. Members will declare their interests when they ask questions. The meeting is being broadcast live via the parliamentary website. A transcript of the meeting will, as usual, be made available and published on the committee's website, but you will have the opportunity to see it before it is posted so you can make any necessary corrections.

Let me move on to the first question. It is important that we have the benefit of your expert advice. What key issues should the committee be considering in assessing whether the new Rwanda-UK treaty addresses the concerns that the United Kingdom Supreme Court expressed so recently?

Professor Theodore Konstadinides: Thank you for having us today. I am from the University of Essex. I believe there are three points that are vital for the committee to take into account. The first relates to diplomatic assurances and the protection of asylum seekers. The second relates to adherence to international and national legal obligations. The third relates to respect for the right to effective judicial protection. I can talk a bit about these in more detail, if you like.

With regard to diplomatic assurances and protection of asylum seekers, I think the committee should examine whether the new treaty adequately addresses the concerns raised by the Supreme Court's recent judgment and whether the Rwanda authorities have already put in place or expedited effective measures to protect asylum seekers from ill treatment and improper determination of their asylum claims.

With regard to adherence to international and national legal obligations, again, the committee, I believe, must assess whether the new agreement adheres to these international and national legal obligations, as highlighted by the recent Supreme Court judgment in AAA, ensuring that asylum seekers receive a proper evaluation of their claims and have their rights respected.

On the right to effective judicial protection, I believe again that it is important to determine whether the agreement allows for adequate judicial oversight and the ability for our courts in the UK to intervene effectively in cases where the rights of asylum seekers might be at risk.

Lord Anderson of Ipswich: The professor has outlined it very well. May I take a practical approach? In summary, if you want to remove asylum seekers to a third country without determining their asylum status, you have to establish two things: first, that there are adequate procedures in place in that receiving country to ensure that their asylum claims are properly determined; and, secondly, that they do not face a risk of refoulement to their country of origin or, indeed, anywhere else. The courts always stress that this requires an assessment of how the asylum

system in the receiving country works in practice, having regard principally to the facts known to the national authorities, but also to deficiencies identified by other bodies, such as UNHCR.

The Chair: This evidence was before the Supreme Court, of course.

Lord Anderson of Ipswich: Yes, of course. If you are going to rely on assurances from the receiving state, the examination that you have to conduct is a fact-sensitive one. You have to see how those assurances will operate in practice. You should have particular regard, I suggest in this case, to the defects that the United Kingdom courts identified last time around, culminating with the Supreme Court's decision. Those are defects in Rwanda's asylum processes and outcomes; a history of refoulement, even when, with Israel, Rwanda had agreed not to practise it; a lack of understanding of refugee law; and a dismissive attitude towards asylum seekers from certain countries, particularly those in the Middle East and Afghanistan.

Those are the sorts of practical issues that you would want to concentrate on in trying to determine whether this agreement addresses the concerns of the court. One might have thought that assessing these new arrangements and deciding whether Rwanda is a safe country will be a pre-eminently judicial function. Of course, under the Bill that we now have before Parliament, it seems to be a function for Parliament, so the report of this committee, I would have thought, will be extremely important.

Q2 **Lord Howell of Guildford:** I have no interests to declare in this. At the outset, I have a very short simpleton's question about refoulement. If the whole purpose of this exercise is to deter, to discourage people from coming, to undermine the smugglers and all the rest, why is it so awful that there is a prospect that someone who arrives here and is deported to Rwanda might face refoulement? Surely there is meant to be a deterrent element in this, and that is certainly a deterrent.

Lord Anderson of Ipswich: Indeed, it is a deterrent. I can completely see that. In a way, this is a contradiction that has to be resolved. The Government, no doubt, would like Rwanda to appear a very horrible place to be sent to, in order to deter the small boats from coming across the channel, but, in order to satisfy courts and other troublesome people who insist on the respect for human rights, they have to demonstrate that people are not going to be sent to torture chambers, either in Rwanda itself or—the concern they had in this case—if Rwanda were to send them on somewhere else, as with the people transferred under the agreement with Israel, who it seems were simply driven in buses to the border and allowed to go over.

It is really all about the obligation, not just under the European convention but under the refugee convention and, indeed, other legal instruments, that countries that respect people's human rights do not deliver other people into places where they could be tortured or suffer

inhuman and degrading treatment. That is the risk you run if people who have fled a country will be refouled back to that country by Rwanda.

Lord Howell of Guildford: I think I understand. Thank you.

Professor Theodore Konstadinides: In response to your question, it is interesting that, back in 2021, it was the UK Government themselves who criticised Rwanda for extrajudicial killings, deaths in custody, enforced disappearances and torture. We have that evidence. Also, there is something the Supreme Court mentioned in its recent judgment in AAA that pertains to judicial independence in Rwanda. For instance, the "risk that judges and lawyers will not act independently" of the Rwandan Government in politically sensitive cases and a "completely untested right of appeal" to the Rwandan High Court are something of a concern, just to add to Lord Anderson's comment.

Q3 **The Chair:** Offshore processing of asylum seekers is not a new thing. It has happened before, but are there precedents for requiring that asylum claims be processed in a third country?

Professor Theodore Konstadinides: There is some past precedent I am aware of concerning Australia. There was an interesting report I came across recently that involved Australia's practices of what it calls the offshore transfer policy in relation to sending asylum seekers to places such as Papua New Guinea and Nauru. There was evidence to the Home Affairs Committee back in 2020 that indicated that approximately 1,200 individuals were sent to these countries and then returned, primarily due to a number of issues that they experienced offshore.

Overall, the evidence, which is from Madeline Gleeson at the University of New South Wales, paints a rather dark picture in relation to the extent to which such a policy can meet its intended goals and the legal and humanitarian issues it raises, which are of significant concern. This is a practice that can be comparable to the Rwandan practice.

The Chair: I want to distinguish between two things. I thought that the Australian experience was sending people offshore, or not allowing them to reach Australia at all, but they were then processed by Australian immigration officials. That is the impression I have.

Lord Kerr of Kinlochard: If their claim was accepted, they went to Australia. That is the point.

The Chair: Yes, so it was offshore in that sense. This is different, because the proposal is that people will be processed by Rwandan officials. We can come to the training and how effective it will be, and we will have comments and questions about that. They will be processed in that way rather than processed offshore, but by UK officials.

Lord Kerr of Kinlochard: If their claim is successful, they stay in Rwanda.

The Chair: Do you know of any other example of this sort of asylum

processing?

Professor Theodore Konstadinides: No, none that I am aware of.

The Chair: If you come up with anything after you have given this evidence publicly, and someone writes to you and says, "Professor, surely you know about this", I would be grateful if you would let us know too, please.

Q4 **Lord Howell of Guildford:** This question follows on from what we have been talking about. The committee's report on the 2022 memorandum of understanding was that we, the committee, thought then that a legally binding treaty was going to be necessary at some stage down the line, but the Government insisted that, oh no, that was not necessary to ensure that the asylum partnership with Rwanda operated in line with international law. Now we have the Supreme Court clearly thinking otherwise about Rwanda's prior non-compliance with its international obligations, so how does this all fit in with the idea that now we need a treaty rather than an MoU? Would it make all that much difference?

Lord Anderson of Ipswich: It is obvious to me that the two Governments have worked hard to put the previous arrangements into treaty form, to devise some new procedures, particularly for appeals, and to fill out in the treaty some safeguards that were more briefly expressed in the memorandum of understanding. Of course, as you said in your 2022 report, an international treaty is the gold standard for two reasons.

First, as you know better than anyone, it is subject to formal parliamentary scrutiny arrangements under CRaG, whereas the Government do not think that they are obliged routinely to disclose MoUs to Parliament and, indeed, as I understand it, refused to co-operate with your committee's inquiry into the Rwanda MoU. Secondly, a treaty is designed to be binding in international law, unlike an MoU, which is generally thought of as a political arrangement between states. This MoU specifically stated that it was not to be justiciable by third parties or individuals and lacked any dispute resolution body.

A treaty is a better option, for example, than the five MoUs and the one exchange of letters that I was looking at when I did my report in 2017 on deportation with assurances. Of course, it is no guarantee of compliance, as we saw from what the Supreme Court made of the Israel-Rwanda arrangements. You could, if one were being cynical, legitimately question how much value is in practice added by having a treaty that is justiciable and enforceable by one party against the other. That rather implies that one party has an interest in enforcing the terms of the treaty against the other. It may be that this is a sort of area where neither party will be particularly alert to instructing lawyers and going to dispute resolution in order to ensure that the other is applying things properly.

Lord Howell of Guildford: Dare I ask, are there not instances scattered through time, certainly in the last 100 years or so, of international treaties being treated as political matters?

Lord Anderson of Ipswich: Yes, indeed. At the end of the day, the form you put this document in is not determinative of anything, but I salute and commend the Government for trying to do it in what you have told them is the proper form and for beefing up the previous arrangements to make them rather fuller than they were before.

Lord Howell of Guildford: It is impertinent to put oneself in the mind of a distinguished Supreme Court judge, but will they be any more assured about what is going on in Rwanda and its Government over the next 10, 20 or 30 years—Governments change—by this being in a treaty? Treaties can be broken. We may have passed it until we are blue in the face, but it makes no difference.

Lord Anderson of Ipswich: Treaties can be broken. Treaties can also be terminated. I believe this one has a provision under which either party can terminate it on three months' notice, whereas those who have been sent there may remain very much longer than that. No, I do not think anyone would suggest that simply by calling it a treaty you make it foolproof.

That is why, as I tried to say in answer to the first question, working out whether these arrangements are good enough is a very practical, fact-sensitive business. That is why, traditionally, these judgments are usually thought to be appropriate for a court, rather than for Parliament. If we are required to pronounce Rwanda a safe country and to exclude the jurisdiction of the courts—or, at least, largely exclude the jurisdiction of the courts—the intention of the Government at least is that we will give the final word on that, rather than the courts.

The Chair: This question of practicality is one we keep coming back to in this inquiry.

Q5 **Baroness Hayter of Kentish Town:** I have two questions and they are unrelated. Given your experience, how confident are you that the Government of Rwanda will comply with the obligations they signed up to in the treaty?

Professor Theodore Konstadinides: It is clear from the recent Supreme Court decision that Rwanda may in the future be compliant with the obligations that it has undertaken, but at the moment the evidence is sufficient to suggest that there needs to be time to prove that. I believe that the time lapse between the Supreme Court's judgment and the signing of the new treaty, which is probably a span of about two weeks, is not sufficient to use as evidence that there have been significant steps to meet the requirements posed by the Supreme Court in this decision.

There was something interesting that the Bar Council mentioned. It said that the fact that Rwanda may have taken on new treaty obligations does not necessarily mean that the risk will be removed. Certainly, it does not mean that those risks have already been removed. The UK's obligation under international law is to ensure that asylum seekers are only ever sent to countries that are actually safe, both now and in the future.

Lord Anderson of Ipswich: I would love to be able to answer your question, but I cannot, because, speaking for myself, I have no first-hand knowledge of the situation in Rwanda. I have never even been there. Nor do I have any first-hand knowledge of the arrangements referred to in the evidence pack, the policy statement, for training and the provision of lawyers and so on. The limit of my capacity is perhaps to suggest a few areas where it might be useful for the committee to question the Home Secretary when he comes to give evidence to you.

Behind that, there is a broader point, which is that there has not been the sort of equality of arms in the evidential position that we are used to in legal proceedings, where each side has an equal chance to put in evidence. You have the Government's case, and if the best you can do is people like me who have never been to Rwanda, it could not really be said that you have had the case that would have been put by the other side. This is significant, as the Supreme Court's concerns were based not so much on gaps in the assurances themselves as on the Government of Rwanda's ability to deliver on those assurances in practice.

The Chair: I ought to declare that, as a barrister, I am subject to the Bar Council's supervision, as it were, and I am a practising lawyer internationally.

On the question of evidence, we asked UNHCR, whose evidence was instrumental in the Supreme Court's decision, whether it would come and give evidence to us, but it has declined. If you can suggest anybody else who might be able to give us the sort of practical evidence that you are referring to—I understand why—I would be pleased to hear it.

Q6 **Baroness Hayter of Kentish Town:** This is being broadcast, so we hope that those who might have evidence are watching. Could I ask a second question, which is quite different? I have struggled. I am not a lawyer, and I have read and reread this treaty a few times. It seems to me that Rwanda says that under the treaty—let us accept that everything in the treaty will be kept to in good faith—it will not remove any relocated individuals, except to the UK in certain circumstances, and Article 10 effectively says that the relocated individual, whether granted asylum or other protection or not, will get the same accommodation and access to jobs and training. I cannot see the difference between someone who is granted asylum protection and someone who is not. Am I missing something in this treaty? Have I read it wrongly?

Lord Anderson of Ipswich: I was puzzled by the same point. Whether you are granted asylum or not seems to be of secondary importance. I suppose what the Government are trying to do is negotiate something that protects them better from the accusation that the Rwandans are going to refoule people or send them to dangerous places. Whether they have been successful or not, the only place they can be sent to is the United Kingdom.

What we have not seen, of course, is the Rwandan asylum law that is referred to very much in passing in the policy statement, which may

make clear some of these things. We are not shown a draft of the law. We are not given any indication, I think, of the timescale of the law or when it might be in force. Quite what the added advantage of being granted refugee status might be over the advantage of being given leave to remain as a non-refugee would, I am afraid, be a question of Rwandan law, which I am certainly not qualified to answer.

Baroness Hayter of Kentish Town: They certainly could not, under the treaty, be sent anywhere else.

Lord Anderson of Ipswich: No, that is true.

Baroness Hayter of Kentish Town: They are assured under Article 10 to get the same financial benefits.

Lord Anderson of Ipswich: The same treatment, yes.

Lord Kerr of Kinlochard: Do you think anyone has seen the asylum law? As I read the treaty, it sounds as if it is a new asylum law that is going to be produced.

The Chair: Professor, do you know that to be right? You are nodding.

Professor Theodore Konstadinides: I am just assuming that there will be a new asylum law as a follow-up.

Lord Kerr of Kinlochard: Like the appeals process, entirely new bodies are being set up there and they will be operating to an entirely new law, which does not yet exist, as far as we know.

Lord Grimstone of Boscobel: I think the documents say that they cannot ratify the treaty in Rwanda until that asylum law is passed. I stand to be corrected, but I think that is in the memorandum.

Lord Anderson of Ipswich: The policy statement says, I think at paragraph 93, that Rwanda will be introducing a new asylum law. It will replace the RSDC and ministerial appeal stages with decisions by caseworkers and a first-instance body. That is all I have learned about it.

Q7 **Baroness Kingsmill:** The Supreme Court said that it was not going to criticise the intentions of Rwanda, but that there were significant practical and cultural issues that stood in the way of it enforcing the things that are written down on paper. I have had some experience, not in Rwanda but of other jurisdictions in similar countries, and it takes a long time for adherence to the rule of law in the way we understand it, or in the way it is understood internationally, to come into effect. Would you agree?

Lord Anderson of Ipswich: Yes, I would agree. I think that we both agree. Some of this apparatus is here already. The monitoring body appears to be the existing very distinguished monitoring body. Certainly, the first-instance body and then the appeal stage appear to be new. I could only imagine that that would not be quick to set up. You are looking at multinational chairs, judges from other countries, properly trained

lawyers, legal aid facilities and interpreters, no doubt speaking quite a variety of languages.

Baroness Kingsmill: The really big thing is the independence of the judges. There have been cases in Rwanda where criticism of the Government, who in fact appoint the judges, is an offence that has been quite seriously punished. It gives you pause, perhaps.

Lord Anderson of Ipswich: On that point, in annexe B, paragraph 4.6 of the treaty says that appeals from the appeal body will be heard by the ordinary courts of Rwanda, although the ability of the ordinary courts to give remedies is restricted by that same paragraph. If one had concerns about the independence of the ordinary courts, as the Supreme Court obviously did, one might have to factor that in.

The Chair: Others watching this might say that the one thing that is clear is the intention that the courts of Rwanda should follow the requirements of international humanitarian refugee law—in other words, that the Geneva Convention and so forth should be followed. Is that sufficient? I want to get your opinion on that as a safeguard.

Professor Theodore Konstadinides: As very well explained there, it all depends on the extent to which we can make an independent assessment that the courts will be independent, the appellants will receive sufficient legal advice, and there will be clarity in the system in terms of knowing your rights and how to defend them. My assessment is that it is probably too soon to speak with any certainty about all that. That was primarily one of the criticisms with regard to the recent Bill to declare Rwanda a safe country. We cannot be certain that this is the case, at least at present. To refer back to what I said earlier, the Supreme Court judged not on the policy itself but on the capacity of Rwanda to deliver on all these grounds.

Lord Anderson of Ipswich: One cannot be automatically damning about this, of course. It is possible to train judges. It is possible for judicial systems that did not recognise independence in political cases to become more independent. I used to be involved a good deal in training judges in the eastern half of our continent in the years after the Berlin Wall came down. With sufficient dedication, money and expertise, these things can be done. I cannot, I am afraid, offer you any assurance that this could be done to any particular timescale. In particular, if one reads about planes taking off in the spring, one has to make some pretty heroic assumptions about how quickly these things are going to be possible.

Lord Razzall: You had better get out there quickly.

Q8 **Lord Fox:** To close that circle, Lord Grimstone helpfully reminded us that the treaty does not come in unless the new law is enacted in Rwanda, but there is no such trigger for the personnel side of this, is there? There is no necessity to have the judges in place or to have the trained personnel supporting that legal process before the treaty comes in force. Is that correct?

Lord Anderson of Ipswich: I believe that is right. There are some figures in the policy statement about training and capacity building for Rwandan officials in the refugee status determination process. It seems they started work on that in 2022 and have already put some people through the training. What I do not see here is any plan or prediction.

Lord Fox: There is no dependency of the actual treaty coming in force at a certain point, once the training is completed. I see none of that.

Lord Anderson of Ipswich: No. There is a sense that the first-instance body and the appeal body will evolve, so they both make provision, I think, for an independent expert to advise them in their first few months of operation. One could imagine that someone has a vision of these bodies finding their feet as they go along, but, no, what you say is right.

Lord Fox: I should say that I have no relevant interests. You have already mentioned your report, when you were Independent Reviewer of Terrorism Legislation, called *Deportation with Assurances*. I wondered whether there were any lessons in that that could be directly applied to our thinking on this treaty.

Lord Anderson of Ipswich: There possibly are, because it is the only reason I can think of why I might be here, so let me try to explain. Deportation with assurances was a policy followed more enthusiastically by the UK than any other country, and it operated for about 10 years after 2005. It was briefly hoped that the Arab spring would place it on a more positive trajectory, but by the time I reported on the policy in 2017, pursuant to a commitment originally made under the coalition agreement, it was effectively defunct.

This was a way of getting people out of the country who were, we thought, dangerous terrorists or terrorist suspects but who could not be put on trial here. It was a way of getting them back to the countries they came from. Assurances were negotiated with six countries to which we wanted to deport these terrorist suspects: Jordan, Libya, Lebanon, Algeria, Ethiopia and Morocco.

I should say for context that the whole idea of making unsafe countries safe for deportation by negotiating deals with them was at the time opposed by most UN rapporteurs and by major human rights NGOs, such as Amnesty and Human Rights Watch. They wanted nothing to do with it, whether as monitors or in any other capacity. Despite that, deportation with assurances was endorsed, although on strict conditions, by the European Court of Human Rights in the Abu Qatada case, also known as the Othman case, in 2012.

Deportations were incessantly litigated, and the courts in fact put a stop to deportations to Gaddafi's Libya in 2008 and to Algeria in 2016. The fruits of the policy over all those years were nine people being deported to Algeria between 2005 and 2013 and a further three to Jordan and Morocco. I visited both Algeria and Jordan specifically to investigate how the assurances were playing out in practice.

The principal lesson that I would draw from my involvement in this is expressed in the words of Professor Clive Walker, with whom I co-authored this report. He did most of the weighty bits, part 2 of the report. He said, "It can be delivered effectively and legitimately"—in international law—"only if laborious care is taken". We saw the laborious care after the Othman judgment, a bit like the Supreme Court judgment in this case, where they set a number of hurdles. Originally, James Brokenshire, a Security Minister, was sent out to Jordan to negotiate a treaty. He was dismissed by the King as insufficiently senior, so Theresa May had to go out twice. It was a pretty intensive process. I had a room in the Home Office at the time, and I remember a Home Office official telling me that he had a regular barber in Jordan. Of course, they were negotiating something relatively limited. The only question was whether they could deliver a treaty that meant that Abu Qatada would be placed on trial without the prosecution relying on evidence obtained by torture.

The second lesson that I would draw is that the status of a country as safe or otherwise cannot be guaranteed for ever. Lord Hope, sitting in the case of RB (Algeria) in 2009 in the top court, said, "Most people in Britain, I suspect, would be astonished at the amount of care, time and trouble that has been devoted to the question whether it will be safe for the aliens to be returned to their own countries", for which in this case we might read Rwanda. The Special Immigration Appeals Commission's reliance on the Algerian assurances was said to be safe in that case, but seven years later, in changing conditions, SIAC held Algeria to be unsafe. That caused me to reflect on the course that is being taken in the Bill and the idea that Parliament should definitively declare a country to be safe. Things can happen in those countries. A position can change.

Then I would refer to one difference. With deportation with assurances, we were looking at small numbers of people and sometimes, as I indicated, at pretty specific issues, such as the use of torture evidence at trial. The scope of the MoUs was narrower and monitoring arrangements were ad hoc. What is envisaged in Rwanda is much more of a volume business. I do not know: hundreds, thousands. This has advantages. It might give us clout to require more fundamental reforms, such as the law that it seems will be going through the Rwandan Parliament.

It also brings problems—for example, in monitoring what happens to the people we send there. As an illustration, when I visited Algeria in 2014—this was before the courts had stopped us sending people there—the embassy told me that they did not know the whereabouts of a single one of the nine people who had been sent there under this policy from Britain, so good luck monitoring the whereabouts of hundreds and thousands.

Lord Fox: What would be your definition of the right level of care with respect to this project, taking the advice of your colleague? Would it be a full-time monitoring exercise in Rwanda, and is there any evidence of that in the treaty?

Lord Anderson of Ipswich: Perhaps Jordan was the best example of that. Algeria was so keen on its own sovereignty that it refused to allow

any human rights group to come and do the monitoring, so the only monitoring was done by the embassy. I think it gave its phone number to everyone who arrived in Algeria and no one rang it, so perhaps no news was good news.

Jordan had different incentives. It had a financial incentive. It also had a reputational incentive, as a very old friend of this country, and wanted to be seen to do the right thing. The big human rights organisations would not act as monitors, but they set up a thing called the Adaleh Center, which was monitoring the two people we had in Jordan, both of them in prison. You might think that was not particularly difficult, but I found that it was extraordinarily time and resource intensive. It required 50% of the time of one person at the embassy to deal with monitoring those two people.

The UK funded eight full-time equivalent posts at the Adaleh Center. I spent a morning at the Adaleh Center. They were wonderful people, but they were frustrated with the Jordanian authorities because they could not visit as frequently as the agreement required. Government officials insisted on attending the visits and they were filmed. They had frictions with the UK authorities over things such as guarantees of monitors' safety and the efficacy of the embassy's interventions with the Jordanian authorities.

When it comes to monitoring and that very practical experience, the big question I have to ask is what powers the monitoring committee has under the treaty to require information, inspection and so on? My goodness, even in a place as friendly as Jordan, you really need those powers to summon people, to require information to be produced and to require meetings with people without government officials present.

Under Article 14.1 of the treaty, the joint committee is supposed to ensure that the monitoring committee has unfettered access, but I cannot see anything in the provision relating to the joint committee, Article 16, that it will in practice have that ability. Its membership is simply representatives of both parties. It meets only once every six months after the initial six-month period. It can make only non-binding recommendations under Article 16.2(a). I wonder what the powers of the monitoring committee—or, indeed, of the joint committee—would be in the face of the Rwanda Directorate General of Immigration and Emigration, for example, which is the body that seems to have been responsible for so-called off-the-books refoulement. I do not see any obligation in the treaty that is enforceable on the state party, on the Rwandan Government, to ensure the necessary access.

I do not mean to be utterly gloomy. A huge effort has been made, as it was made with the Jordanians, and in Jordan it was enough. It was enough in the end to get Abu Qatada out there and he stood trial, so the objective, in that sense, was achieved. I can see that the more practically you look at this and the whole business of monitoring, the more difficult it is and the more you see the need for powers of compulsion, which I do not see in this treaty.

Q9 **Lord Watts:** I have a very brief point of clarification. Coming back to Baroness Hayter's point, the treaty says that they will enjoy the same support and accommodation. What is it the same as? I am trying to work out what the standards are.

Lord Anderson of Ipswich: I think it is saying that—this is the beginning of Article 10—once a relocated individual has been granted refugee status, they must be provided with the same level of support and accommodation as a relocated individual seeking asylum, integration into society and freedom of movement, in accordance with the refugee convention.

Lord Watts: I am still not clear about what that means. Would that be the sort of accommodation and support that would be offered to a refugee who went straight into this country, or is it based on UK support and accommodation?

Lord Anderson of Ipswich: It is spelled out in annexe A on reception and accommodation. Part 2 of that annexe is called "Support post-asylum decision for refugees and people under humanitarian protection". That sets out what they are entitled to, and it is a good list: accommodation and support, as specified in the annexe; five continuous years; language training; professional development; integration programmes; freedom of movement.

The Chair: It gives quite detailed requirements, including, for example, access to baby changing facilities. It has been thought about quite hard. In my understanding, it is saying that that is what people who ask for asylum are entitled to. Someone who is then granted asylum is entitled to continue to have that same level of support.

Lord Anderson of Ipswich: Yes, at least for five years.

The Chair: That was underlying the question from Baroness Hayter. Lord Fox, had you finished your question?

Lord Fox: I did, and it was very helpful. Thank you very much.

Lord Anderson of Ipswich: I probably answered the next one as well, for which I apologise.

The Chair: I will come back to Lord Watts, who has a question in relation to the monitoring and review process.

Q10 **Lord Watts:** The agreement establishes a new asylum appeals process, including international judges and independent experts. Do you have any reflections on the new process?

Professor Theodore Konstadinides: The structure we see in the agreement with regard to the monitoring and the joint committee replicates, in a way, what we saw previously in the memorandum of understanding. However, in the agreement, we have seen more amplified roles in terms of the capacity and competence of these two committees.

The monitoring committee is tasked to oversee the entire relocation process. This includes screening and decision-making procedures in both the UK and Rwanda. The committee's responsibilities extend to ensuring compliance with the agreement and providing reports on the conditions and treatment of relocated asylum seekers. Also, in fulfilling these duties the committee is granted full access to all necessary data and inspection resources and is responsible for monitoring a system that allows for confidential complaints from relocated individuals. It is a welcome development that the agreement provides for a more amplified role for this committee.

The joint committee is composed of representatives from both parties. It is co-chaired by UK and Rwanda representatives. Again, it is a welcome development to have a committee that also records all complaints made by relocated individuals and their outcomes. As Lord Anderson mentioned, the meetings are not very frequent. My view is that the efficacy of the meetings will rely not only on how often they take place, but on the quality of the discussions, the level of detail in reviewing the implementation of the agreement and how responsive they are to the findings.

The independence and expertise of the members of both the monitoring committee and the joint committee are, in my view, crucial. Their ability to operate without bias or influence from either party can significantly impact the objectivity and effectiveness of their oversight.

The Chair: You talked a few moments ago about "both parties". I want to be clear about this. When you talk about representatives of both parties, you mean the UK and Rwanda, not anyone else.

Professor Theodore Konstadinides: The UK and Rwanda, yes. The agreement is bilateral, so we are talking about the UK and Rwanda.

Lord Watts: You are spelling out quite a detailed structure with, I suspect, a lot of training, recruitment and work to be done to put that in place, and yet the Government are talking about sending people out in spring. How do those two things meet?

Professor Theodore Konstadinides: I agree. It is too soon, because significant expertise needs to be developed in these members, not least in international asylum and human rights law, as well as their understanding of the practical aspects of the asylum processes in place. These two things will be vital to proceed with certainty that the scheme will be successful.

Lord Anderson of Ipswich: I am not sure whether your question was about courts or about monitoring.

Lord Watts: It is about the whole system and what is in place.

Lord Anderson of Ipswich: The only thing I would add on monitoring is that we know from the policy statement that the monitoring commission has some pretty distinguished representation, with no less a member

than Alexander Downer, former Minister for Foreign Affairs in Australia. I can see the clout that people such as that might bring, but my experience on the ground in Jordan is that you really wanted some terriers there, people who have the time to spend on the ground beating on people's doors until they give in. I would slightly wonder whether that calibre of person is quite what the monitoring committee needs.

The Chair: I thought you were making a compliment.

Lord Anderson of Ipswich: They are very distinguished, but I wonder whether someone such as Alexander Downer will have the time to do the job that I saw the Third Secretary doing in Jordan, continually making phone calls and not taking no for an answer.

Q11 **Lord Kerr of Kinlochard:** About the legal proceedings inside Rwanda envisaged in the treaty, I see three known unknowns. First, I think we have agreed that the law that will be practised does not yet exist.

Secondly, the treaty is clear that the applicant is entitled to legal representation at every stage, but the capacity existing in the Rwanda Bar Association, which is the pool in which they draw, is an unknown. Certainly, since the law does not exist, there cannot be yet much experience in the Rwanda Bar Association of operating under that law.

The third unknown is the thing that puzzles me most. There is a new first-instance body, which is still inside the Executive but is not the present arrangements in the Executive. It is a new body specifically to look at asylum cases. Above it is a new appeals body, which is entirely new and is independent, outside the Executive. That is good. If I were in the Supreme Court, an unlikely eventuality, I would have thought that I would be inclined to argue, "That all sounds fine, but should one not wait and see how it works in practice before one decides whether safety is assured?"

It seems to me that, unlike the monitoring, which I think is specific to the agreement between Rwanda and the United Kingdom, the asylum law and the processing arrangements set out here will apply to any asylum seeker in Rwanda, so there will be some case law to look at as soon as they have set up these new bodies, got their new law and got sufficient legally qualified members of the Rwanda Bar Association. Is that right: that this will replace all the existing systems and law in Rwanda, in respect not just of people sent by the British but of all refugees? If so, do you have any idea when all that will have been set up and when we will able to look at it and say, "It's working well", or, "It still has room for improvement"?

Lord Anderson of Ipswich: Your known unknowns are similar to mine. You have not seen the law. You do not know when it will come into force or when the training will be complete, although we know something about the capacity building. We do not know about the availability of legal advisers. I might add interpreters, which I do not think is just a detail in view of the range of people we are likely to be looking at.

I would go on and identify three more known unknowns. One would be whether the training will be sufficient to remove what the Supreme Court described as the dismissive attitude towards asylum seekers from certain parts of the world. In other words, you could say that there is the cultural issue. What will be the consequences of appeals from the appeal body being heard by the ordinary courts of Rwanda? Does that inject an element of question as to judicial independence? How will the complaints mechanism work?

As to whether the new law will apply across the board, I do not know. I imagine that people who care about human rights would be rather pleased if it did. One argument in favour of deportation with assurances, if I can use that term broadly, is that sometimes the good practice that is required by treaty with the sending country is adopted more generally. I saw some small examples of that in Jordan. I was talking to a prison governor, checking that he was complying with what he was supposed to be doing. I said, "When the prisoner goes to court, does he wear a blindfold in the bus?", because the treaty said that he was not supposed to. He said, "No, it says in the treaty he shouldn't wear a blindfold, but I don't make the others wear blindfolds either. Why should the prisoner from Britain have preferential treatment?" I thought that was rather a good example of good practice being spread. Until I have seen the law, I could not tell you with any certainty whether that will be the case here.

Professor Theodore Konstadinides: There are two points I want to make. The first is the extent to which there needs to be detailed legislation in Rwanda to implement this agreement. My hunch—we were talking about this with Lord Anderson before the session—is that Rwanda is a monist state in international law, which means that it does not need to legislate extensively in order to implement the agreement.

If I rightly understood your question to be whether this new structure of the appeal body will replace the system across the board or whether it applies only in this particular case for this agreement, I understand that it only applies to this agreement, because the appeal body is setting up a co-presidency. Despite the diverse panel of judges, it is to be applied in this particular situation.

I agree with Lord Anderson. Training provided for non-Rwandan judges on Rwandan law and judicial practice, along with encouragement for judges to offer feedback, will aim to maintain uniform standards, but this will take time. There will be a difference in language and legal culture among judges from the various nationalities. Again, that might create a different set of barriers to effective communication and understanding. Co-ordinating a panel of judges from different countries, particularly for in-person hearings, may introduce other logistical complexities and potentially lead to delays.

Q12 **Lord Udny-Lister:** You touched upon this earlier, but do you have any observations on the dispute settlement arrangements?

Lord Anderson of Ipswich: There will be members of this committee who have much more experience of these mechanisms than I have. Looking at Article 22, I thought it was pretty good. You must refer to the joint committee, which has to meet within 14 days. If it does not settle the dispute within 21 days, you go to political consultation. If that does not work within 21 days, you refer it to the permanent court of arbitration. That struck me as pretty brisk and probably pretty effective, if, of course, anyone is actually motivated to invoke the dispute resolution processes.

The Chair: That was your earlier point. I want to ask one general question, but I do not know whether members of the committee have other questions they would like to ask.

Q13 **Lord Razzall:** Lord Watts did not pinch my question, although he pinched Lord Kerr's. If I can take you back from Article 22 to Article 21, Article 21 is a strange provision that says that, if the agreement terminates, the parties should continue to comply with their obligations in relation to people who have already been transferred. If the agreement is terminated, with all the structure that has been put in place to monitor it and deal with it, how will that happen if the agreement is terminated? How would it be enforced?

Professor Theodore Konstadinides: Article 21 should probably be read in conjunction with Article 23, which is a sunset clause. Article 21 does not align with the typical sunset clause. Rather than setting a fixed time limit, it implies that any relocations made up to the termination date will remain binding until the end of the process for each individual involved. This differs from a traditional sunset clause, which usually acts as a notice period, extending a treaty's applicability beyond its termination notification. Anyway, we have it in Article 23. It basically states that obligations in force to the termination of a treaty remain valid, despite a denunciation, so leaving a sort of grace period for things to be wrapped up, if you like, following termination, rather than implying anything else. That is my own interpretation.

Lord Razzall: All the mechanisms, the different structures we have just discussed, will all stay in place until the last one who has been transferred comes to the end of their period.

Professor Theodore Konstadinides: At least that is my understanding. There is almost a legacy period, if you like, before the termination becomes effective.

Q14 **Lord Marland:** I declare an interest, in that I was in Rwanda this February and last June, because I am chairman of the Commonwealth Enterprise and Investment Council and we have co-operated with the Rwandan Government in the last two years in their role as chair in office of the Commonwealth. I know the Government quite well and I know the people there.

I am struck by your statement that it is a balance between a deterrent and a good place to go. There are elements, obviously, where it is a

deterrent, because it is an emerging state that does not have the infrastructure, as you have quite rightly placed. On the other hand, it is an emerging state that wants to be a far better country than it was and therefore is putting things in place rapidly. It is spending a huge amount of money on infrastructure.

As an aside, every citizen has to go out every Saturday for two hours to clean the common parts. There are all sorts of things about an emerging country, and I do not wish to give a sort of diatribe on it, other than, for those who have not been in the judiciary, to recommend that they go, as you have had first-hand knowledge of Jordan. In the end, is it a better place than from whence they came? Largely, I would imagine that it will be. It is up to us, as a country, to help them develop that. I am sorry about that statement.

The question is whether we have missed anything in our questioning. You were very kind at the beginning to give us two or three pointers. I think the issue of independent monitoring is a very important one for the Secretary of State. Have we addressed things such as health issues? What happens if there is a pandemic, which might rip through the place quite rapidly? Are there other things that you should perhaps draw our attention to that we have not already asked?

Lord Anderson of Ipswich: All sorts of things might happen to people in Rwanda, but there are limits to the extent to which, as the sending country, we are responsible for what might happen. Even among our judiciary, Lord Phillips of Worth Matravers, when he was opining in these cases 10 or 15 years ago, said that it might be a difficult road for the European Court of Human Rights to go down if it starts requiring too many human rights to be respected in the receiving country. We will never be able to send anybody anywhere, and people will get extremely fed up that we cannot get rid of people who, for whatever reason, we want to get rid of, except to a country that effectively has the same standards of human rights protection that one might expect in Berkshire.

It is not a perfect exercise, and a counsel of perfection would be wrong. The concerns of the Supreme Court were quite focused on the risk of refoulement. As I tried to explain in the beginning—I am not sure whether I did it very clearly—that is a bit of a flashing red light for it, because it means sending people, potentially, back into the torture chamber. That is not something that a civilised country is allowed to do, not just under the European Convention on Human Rights but under the refugee convention.

If you want a small curveball for the Home Secretary, the only one that slightly intrigued me was something that was in the memorandum of understanding and is not in the treaty. Under 5.2.3 of the memorandum, the United Kingdom, when it sends people over, is required to provide details of any security issues known to the United Kingdom. I think I am right in saying that that has mysteriously disappeared from Article 5 of the treaty. One could hazard a guess as to why that might have been, but it might be interesting to ask.

The Chair: I thought I had seen something in the treaty that corresponds to that, but we will look at that.

Lord Anderson of Ipswich: I may be wrong, but it is certainly not in the same place it was in the memorandum.

Q15 **Baroness Hayter of Kentish Town:** This question partly goes back to something that Lord Anderson was saying earlier about how a country can change. It can change in the way Lord Marland said, by improving. It can go the other way.

The Bill says that it would prohibit any court or tribunal from considering any claim that Rwanda was not a safe country, but say it was to change. If you read the Rwandan journals and things, as I am now doing, you will see that there is some increasing ethnic tension in Rwanda at present. So what would have to happen if some of that ethnic tension were, unfortunately, to break out again, which there are some signs of? It would presumably mean ending the treaty at three months' notice. What happens if there is a change for the worse? Would the Bill then fall? The Bill has said that it would prohibit any court from looking at whether Rwanda was not a safe country because we are taking the decision now, whether it is right or wrong, that it is safe, but it could change.

Lord Anderson of Ipswich: There might be two safety valves in the Bill. Please do not confuse me with an advocate for the Bill, but it might be interesting to confirm with the Home Office whether they are indeed safety valves.

One, as I read Clause 2(5), is that there is no exclusion of Section 4 of the Human Rights Act, which is the section that allows a person to go to court and seek a declaration of incompatibility. They would effectively say, "This Bill is not worth the paper it's written on, because Rwanda is obviously not a safe country, so would the court now please declare the Bill incompatible with human rights?" In fact, there is authority of our highest court, in a case called Nasseri, for taking exactly that course in relation to an Act of 2004, which deemed every EU country to be a safe country. This was challenged, and the House of Lords or the Supreme Court did not like it much, but it said that the remedy is to seek a declaration of incompatibility. Of course, it is then for the Government to decide whether they want to give effect to that declaration of incompatibility, and there are some rather stern words on that subject in the legal paper that was produced on 11 December.

The second safety valve is rather a small one, but it is in Clause 4 and relates to the ability of some people, if they are in very particular circumstances, to seek interim relief against their removal to Rwanda, but that interim relief specifically cannot be based on the proposition that Rwanda is not a safe country in general. I doubt very much whether that very limited ability is sufficient to make this Bill compatible with Article 3 of the European convention. I suspect that is why the Secretary of State was unable to make a statement that it was compatible with the European convention.

The Chair: Thank you for that. I have tried to keep a distinction between the Bill and the treaty, because our job is the treaty, not the Bill.

Q16 **Lord Fox:** There has already been a fairly huge transfer of UK public money from here to Rwanda. One must assume that part of the motivation, if not all the motivation, from Rwanda's point of view, is that transfer of money and the future transfer of money. In your experience, have you ever seen financial inducement used in this way to get treaties that we think we want at this end? What examples are there, and what order of magnitude were we looking at then?

Lord Anderson of Ipswich: When I was in Jordan, I had a conversation with a very senior member of its Parliament's human rights committee. She assured me that Jordan would abide by its assurances, and I asked why, imagining that I was going to hear something about the long friendship between our two countries and Jordan's wish to be a respectable player on the international stage. She responded, "You give us so much money. We'd be crazy not to keep the agreement".

The Chair: To be fair, you have identified things that need to be paid for—training, judges, monitoring bodies and so forth—so one needs to bear that in mind.

Lord Fox: How much change do you think they might get from their £200 million-plus by the time all that training and everything has been done?

Lord Anderson of Ipswich: I cannot say, although I think the Australian scheme that my colleague spoke of also turned out to be extraordinarily expensive, so it may just be in the nature of doing these things.

Lord Fox: There is more money to follow then, perhaps.

Lord Anderson of Ipswich: I could not comment on that.

Q17 **Lord Kerr of Kinlochard:** As an ex-negotiator, the article I particularly applauded in the treaty is the financial arrangements article, which is wonderfully unspecific about what the financial arrangements are. Very wise, too. As an ex-mandarin, I warmly applaud that.

The puzzling one for me is the next article, Article 19, which says that the parties shall make arrangements for us, the United Kingdom, to resettle "a portion" of Rwanda's most vulnerable refugees in the United Kingdom. I would never have let that into a treaty, because that is so wide. We clearly have taken on an obligation, but there is room for dispute about the portion and what it means in numbers. Is that not a bit strange to have in a treaty?

Lord Anderson of Ipswich: Lord Kerr knows more about the inside of the negotiating room than I do. One can only imagine why constructive ambiguity was the option here, but certainly it is not very precise. From the United Kingdom's point of view, that might be quite an advantage,

because it is very difficult to say that it has undertaken anything very significant at all.

Professor Konstadinides: The numbers discussed were about 200 a year, whatever "a portion" might mean.

Lord Anderson of Ipswich: The Home Office would say that Hope Hostel has a maximum of about 200, but this is coming the other way. These are people who seek asylum in Rwanda, who have special needs of some kind that cannot easily be satisfied in Rwanda, and who are therefore sent to the United Kingdom, but quite what is envisaged by that I have no idea.

Lord Howell of Guildford: Has anyone done any opportunity cost of whether it would be cheaper to keep them here in the first place rather than send these enormous sums of money to make arrangements in Rwanda? They sound very nice, as Lord Marland has said, so obviously they are not much of a deterrent at all.

Lord Razzall: You could stay at the Ritz with a champagne dinner every night for less money.

Q18 **Lord Howell of Guildford:** What is the aim behind this? Is it to unclog the waiting lists and the detention centres? Is it just to make room or ease political objections in certain localities? Has anyone considered that it would be very much cheaper to keep them here and avoid having to go through all this rigmarole?

Lord Anderson of Ipswich: As I understand it, the whole philosophy of this Rwanda plan is founded on deterrence and the assumption that, by threatening some people with being sent to Rwanda, the boats will stop crossing the channel. If that were to happen, no doubt it might be seen as quite a cost-effective policy. The committee will have its own view as to how likely that is to happen.

Lord Howell of Guildford: Finally, this is a question I am almost too embarrassed to ask. When they get to Kigali, are they asylum seekers still or are they refugees, or are they just people who have come here illegally and who we have chucked out, and it is cheaper to send them there? Probably not, actually. What is the status of these people?

Lord Anderson of Ipswich: They are still asylum seekers. We only screened them. We did not consider their application for asylum. That is then considered in Rwanda.

Lord Howell of Guildford: We rejected their asylum here.

Lord Anderson of Ipswich: No, we have not considered their claim for asylum. The idea was to avoid clogging up our systems with people appealing adverse determinations and so on. The Supreme Court did not, in principle, say that was wrong. Its objections are specific to conditions in Rwanda; they are not objections to the notion of sending people to have their asylum claims assessed elsewhere and, indeed, to be told that,

if their claims are successful, they can have asylum in Rwanda rather than here.

The Chair: Thank you very much, both of you, for your helpful evidence. You can now withdraw. The committee has some private business it needs to continue to deal with.